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OFFICE OF PETITIONS

In re Patent No. 7,754,236
Issued: July 13, 2010
Application No. 10/517,468
Filing or 371(c) Date: December 6, 2004
Dkt. No.: KUZ-0021

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: PATENT TERM ADJUSTMENT
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This is a decision on the petition filed August 24, 2010 requesting that the patent term adjustment of 1476 days for the above-identified patent be increased 35 days. This matter is being properly treated pursuant to 37 CFR 1.705(d).

The petition is hereby **DISMISSED**.

The above-identified application matured into U.S. Pat. No. 7,754,236 on July 13, 2010. The patent issued with 1476 days of patent term adjustment. The instant request under 37 CFR 1.705(d) is timely filed. Patentee argues that the adjustment pursuant to 37 CFR 1.703(b) is improperly reduced 35 days.

The petition has been carefully considered, but is not persuasive.

In an international application, the period of adjustment under 37 CFR 1.703(b) period is based on the failure of the Office to issue a patent within three years after the national stage commenced under 35 U.S.C. 371(b) or (f). See, 1.702(b). The priority date of this application is June 7, 2002. The requirements for early commencement were not met; accordingly, the national stage commenced in this application on December 7, 2004. The period of adjustment pursuant to 37 CFR 1.703(b) commenced December 8, 2007 and ended July 13, 2010.

However, in accordance with 37 CFR 1.702(b)(4), any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court is not included in the period of adjustment pursuant to 37 CFR 1.702(b). Thus, in accordance with 37 CFR 1.703(b)(4), the number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 41.31 of this title and ending on the date of the last decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 45, or on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first, if the appeal did not result in a decision by the Board of Patent Appeals and Interferences.

Accordingly, the period of adjustment under 37 CFR 1.703(b) does not include the period of time from the filing of the Notice of Appeal on March 19, 2010 to the mailing of the Notice of Allowance on April 23, 2010, as the appeal did not result in a decision by the Board.

In view thereof, no adjustment to the patent term will be made.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Receipt is hereby acknowledged of the \$200.00 fee required per 37 CFR 1.18(e).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

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